1 2 3 4	JULIA A. OLSON (CSB #192642) Wild Earth Advocates 2985 Adams Street Eugene, OR 97405 tel: 541-344-7066 fax: 541-344-7061 jaoearth@aol.com	
5 6 7 8	SHARON E. DUGGAN (CSB #105108) Law Offices of Sharon E. Duggan 370 Grand Ave., Suite 5 Oakland, CA 94610 tel: 510-271-0825 fax: 510-271-0829 foxsduggan@aol.com	
9	Attorneys for Plaintiffs	
10 11	FRIENDS OF YOSEMITE VALLEY and MARIPOSANS FOR ENVIRONMENTALLY RESPONSIBLE GROWTH	
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14	IN THE UNITED STATES DISTRICT COURT	
15	FOR THE EASTERN DISTRICT OF CALIFORNIA	
16	FOR THE EASTERN DISTRICT OF CALIFORNIA	
17	FRIENDS OF YOSEMITE VALLEY, a non-	Case No.
18	profit organization; and Mariposans for the Environment and Responsible Government	
19	("MERG"), a non-profit corporation,	COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
20	Plaintiffs,	
21	V.	
22	DIRK KEMPTHORNE, in his official	
23	capacity as Secretary of the Interior, et al., the	
24	NATIONAL PARK SERVICE, JONATHAN B. JARVIS in his official capacity as the	
25	Western Regional Director of the National	
26	Park Service, and MICHAEL TOLLEFSON in his official capacity as the Superintendent of Yosemite National Park,	
27	,	
28	Defendants.	
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JURISDICTION

- 1. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, as this action arises under the laws of the United States.
- 2. An actual controversy exists between the parties within the meaning of 28 U.S.C. § 2201(a). Final agency action exists that is subject to this Court's review under the Administrative Procedure Act, 5 U.S.C. § 702 ("APA"). This Court may grant declaratory relief, and additional relief, including an injunction, pursuant to 28 U.S.C. § 2201 and 2202, and 5 U.S.C. § 705.
- 3. Venue lies in this judicial district pursuant to 28 U.S.C. § 1391(e), because the Merced River and Yosemite National Park are located in this judicial district and the agency actions challenged herein were made in this judicial district. Both Plaintiffs have offices in this district and certain of their organizational members reside within this district.

OVERVIEW

4. This lawsuit challenges the decisions of Defendants Dirk Kempthorne, *et al.* ("NPS" or "Park Service") to take actions affecting the Merced River and adjacent lands without the predicate required comprehensive management plan that would protect and enhance the outstandingly remarkable values of the Merced Wild and Scenic River in Yosemite National Park in accordance with the Wild and Scenic Rivers Act ("WSRA") and the 1982 Interagency Guidelines promulgated to comply with WSRA. This lawsuit also challenges the Park Service's decisions to take actions that adversely affect the Merced River and adjacent lands without sufficiently addressing their environmental impacts, or adequately considering alternative courses of action. Plaintiffs bring this action under WSRA, 16 U.S.C. §1271 *et seq.*, the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.* ("NEPA"), and its implementing regulations; and the APA, 5 U.S.C. § 701 *et seq.*

- 5. Specifically, Plaintiffs challenge the Final Yosemite Valley Plan and Supplemental Environmental Impact Statement (collectively the "YVP") and the December 29, 2000 Record of Decision implementing the YVP ("YVP ROD").
- 6. In 2000, the Park Service approved actions in the YVP ROD that will degrade the Merced River's outstandingly remarkable values and free-flowing nature, in violation of WSRA, and these actions were not guided by an adequate CMP. Even after the 2000 Merced River Comprehensive Management Plan ("2000 CMP") was deemed illegal and even after the issuance of the subsequent 2005 Revised Comprehensive Management Plan ("2005 CMP") and the finding by this Court that the 2005 CMP was also illegal, Defendants have violated federal law by pursuing projects under the YVP ROD, and have failed to submit the YVP to further analysis and public comment. Now that this Court has set aside the 2005 CMP and ROD, and there is no valid CMP for the Merced River, the Park Service continues to rely on and has not withdrawn the YVP ROD.
- 7. When it adopted the YVP, the Park Service violated NEPA by failing to adequately analyze alternatives and environmental effects. Additionally, the YVP is inconsistent with the 1980 General Management Plan ("GMP") to which it purportedly tiers. Additionally, the GMP must first be amended before the Park Service can evaluate whether and to what extent the YVP complies with the Park's management direction and should be implemented.
- 8. The Park Service has issued environmental assessments and findings of no significant impact under NEPA and approved projects that tier to and implement the YVP, including Curry Village and East Yosemite Valley Campground Improvements Project, the Yosemite Lodge Area Redevelopment Project and the East Yosemite Valley Utilities Improvement Plan. These projects are invalid for the same reason the YVP is invalid because they rely on management direction that is invalid or nonexistent and are not protective of the Merced River. In addition, their environmental analyses are inadequate under NEPA.

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9. Plaintiffs bring this action to ensure that defendants comply with WSRA, NEPA, and court orders, and thereby manage Yosemite National Park in a manner consistent with these laws, which require that the agency protect and enhance Yosemite's magnificent natural resources for present and future generations.

PARTIES

- 10. Plaintiff FRIENDS OF YOSEMITE VALLEY ("Friends") is a grassroots, nonprofit membership organization founded in 1997. Friends is headquartered in Mariposa County, California, which contains Yosemite National Park. A primary goal of Friends is to protect and restore the wildness and natural systems of Yosemite through education, advocacy, and action. Friends also seeks to assure equitable treatment and public enjoyment for all socioeconomic levels of park visitors. Friends was founded in Yosemite Valley by conservationists and rock climbers, who first objected to the proposal to expand the Yosemite Lodge in Yosemite Valley at great public expense, and to the detriment of the Merced River and Yosemite Valley environment. Friends endeavors to protect Yosemite's natural environment from the adverse impacts of human development, and has been an active participant in the Yosemite planning process. Friends submitted comments on Park planning documents, including the 2000 Plan, the 2005 Plan, the YVP, the Curry Village and East Yosemite Valley Campground Improvements Project, the Yosemite Lodge Area Redevelopment Project and the East Yosemite Valley Utilities Improvement Plan. Friends has also attended numerous public hearings and petitioned appropriate officials of the National Park Service and the Secretary of the Interior to comply with the law.
- 11. Members of Friends live and/or work in Mariposa County, and some members live and work within Yosemite National Park, the El Portal Administrative District, and other park areas. The group's members use and enjoy Yosemite National Park, including the Merced River corridor, as an important element of their Park experience, for a variety of activities, and

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for recreational, scientific, cultural, inspirational, educational, aesthetic and other purposes on a regular basis. These members intend to continue using and enjoying Yosemite frequently in the future. Friend's members derive the aforementioned benefits through rock-climbing, swimming, nature study, contemplation, hiking, camping, bird-watching, wildlife observation, photography and generally surrounding themselves with the natural beauty of Yosemite, a natural wonder of the county in which they reside..

Page 5 of 22

12. Plaintiff Mariposans for the Environment and Responsible Government ("MERG") is a grassroots, nonprofit organization founded in 1989 and headquartered in Mariposa County, California, which contains Yosemite National Park. MERG was started by a group of concerned citizens who wanted to gather and disseminate information about an open pit, cyanide heap leach mine proposed for Mariposa County. Since 1989, MERG has continued to inform citizens and decision-makers about environmentally sensitive issues or projects in order to promote a sustainable high quality of life for present and future Mariposans. MERG's major goal is the preservation of the rural character and natural environment of Mariposa County by providing information to assist decision-makers in making environmentally responsible choices as the community experiences growth and change. Among its many endeavors to protect the natural environment from adverse impacts caused by human development, MERG has been an active participant in the Yosemite planning process and many of its members helped accomplish the designation of the Merced River as a federal Wild and Scenic River. MERG also commented on the 2000 Plan, the 2005 Plan, the YVP, the Curry Village and East Yosemite Valley Campground Improvements Project, the Yosemite Lodge Area Redevelopment Project and the East Yosemite Valley Utilities Improvement Plan and has attended numerous public hearings and petitioned appropriate officials of the National Park Service and the Secretary of the Interior to comply with the law.

- 13. Members of MERG live and/or work in Mariposa County. Some of MERG's members are retired Yosemite National Park employees. The organization's members use and enjoy Yosemite National Park, including the Merced River corridor as an important element of their Park experience, for a variety of activities, and for recreational, scientific, cultural, inspirational, educational, aesthetic and other purposes on a regular basis. These members intend to continue using and enjoying Yosemite frequently in the future. MERG's members derive the aforementioned benefits through camping, hiking, bird-watching, wildlife observation, contemplation, photography and generally surrounding themselves with the natural beauty of Yosemite, a natural treasure of the county in which they reside. MERG's members regularly use and enjoy the numerous values of the Park, including the Merced River corridor.
- 14. The recreational, scientific, cultural, inspirational, educational, aesthetic and other interests of Plaintiffs are or will be adversely and irreparably injured by the Park Service's violation of WSRA and the 1982 Secretarial Guidelines; and NEPA and its implementing regulations in preparing and issuing the YVP, the YVP ROD and the EAs and FONSIs for the named projects, which implement the YVP, unless the relief here requested is granted. These are actual, concrete injuries to plaintiffs and plaintiffs' members that would be redressed by the relief sought herein. Plaintiffs have no adequate remedy at law.
- 15. Defendant DIRK KEMPTHORNE is the Secretary of the Interior. Secretary Kempthorne is the federal official charged with the responsibility for the proper management of the National Park Service and Yosemite National Park and is herein sued in his official capacity.
- 16. Defendant the NATIONAL PARK SERVICE administers Yosemite National Park and is responsible for administering the Merced as a Wild and Scenic River in Yosemite National Park.
- 17. Defendant JONATHAN B. JARVIS is the Western Regional Director of the National Park Service. As Western Regional Director, Defendant Jarvis participates directly in

the planning processes for Yosemite National Park, including those at issue in this complaint. Defendant Jarvis' predecessor signed the December 29, 2000 YVP ROD, which is a subject of this action. Defendant Jarvis is herein sued in his official capacity.

18. Defendant MICHAEL TOLLEFSON is the Superintendent of Yosemite National Park. Defendant Tollefson is directly in charge of the operation of Yosemite National Park. Defendant Tollefson's predecessors signed the decisions approving the YVP and projects designated therein. Defendant Tollefson is herein sued in his official capacity.

STATEMENT OF FACTS

Procedural Background

- 19. In February 1999, MERG and the Sierra Club filed a lawsuit against the Park Service challenging, in part, its failure to prepare a comprehensive management plan for the Merced River and its decision to proceed with an El Portal Road project, which would adversely affect river values, in the absence of a comprehensive management plan. In July 1999, this Court ruled, in part, that the Park Service had illegally failed to prepare a comprehensive management plan and ordered it to prepare a valid comprehensive management plan pursuant to WSRA by July 12, 2000, which was later extended to August 14, 2000.
- 20. The availability of the 2000 Comprehensive Management Plan for the Merced Wild and Scenic River ("2000 CMP") was published in the Federal Register on July 7, 2000. On August 9, 2000, NPS signed the 2000 ROD.
- 21. In 2000, Plaintiffs filed a lawsuit challenging the 2000 CMP. After the YVP ROD was published, Plaintiffs sought leave of the Court to amend their complaint to include a challenge to the YVP. The Park Service opposed and this Court denied Plaintiffs' motion on the basis that it would serve judicial economy to proceed with the 2000 CMP litigation first and separately from litigation over the YVP. This Court later upheld most of the 2000 CMP, but held that the Park Service failed to amend the GMP to be consistent with the CMP.

- 22. Plaintiffs appealed the district court's decision to the Ninth Circuit. The Ninth Circuit held that the 2000 CMP, in its entirety, is invalid. *Friends of Yosemite Valley v. Norton*, 366 F.3d 731 (9th Cir. 2004). The Ninth Circuit instructed the NPS to prepare a "new or revised" comprehensive management plan for the Merced River. *Id*.
- 23. This Court ordered the Park Service to comply with the Ninth Circuit's April 20, 2004, Order, and create a "new or revised CMP" and to "comply with NEPA by issuing a supplemental EIS." Memorandum Opinion and Order Re Reconsideration on Remand of Plaintiffs' Request for Injunctive Relief (Doc. # 219) (July 6, 2004 Order). This Court again ordered the NPS to revise the Park's general management plan. *Id*.
- 24. In July, the Park Service issued the 2005 "Revised Comprehensive Management Plan and Supplemental Environmental Impact Statement" (collectively the "2005 CMP"), the July 2005 Record of Decision ("2005 ROD") amending the 2000 CMP. ROD at 3; 2005 Plan, I-25. The NPS did not issue a new or revised CMP. 2005 Plan, ES-1, *see also* II-1.
- 25. On November 11, 2005, Plaintiffs filed their First Supplemental Complaint for Declaratory and Injunctive Relief against the 2005 CMP and ROD.
- 26. This Court ruled that the 2005 CMP and ROD were invalid, violating both WSRA and NEPA, and ordered the Park Service to prepare a new CMP.
- 27. This Court later enjoined various Park Service projects that would affect or be affected by the new CMP. At least some of these projects would fall under the YVP at issue in this lawsuit. Presently, there is no CMP for the Merced Wild and Scenic River.
- 28. In 1980, the Park Service issued a General Management Plan ("GMP") for Yosemite that directed future planning and management, in large part, by establishing basic principles of protection, such as the protection of natural processes, and included facility and vehicle-based capacity limits for Yosemite Valley.
- 29. After one planning effort, the Yosemite Lodge Development Plan was preliminarily enjoined, the Secretary of the Interior combined four segmented planning efforts into one plan to address actions in Yosemite Valley. This ultimately became the YVP at issue in

this suit. In the winter of 1998 until February 1999, the Park Service conducted scoping to prepare to develop the YVP.

- 30. In November, 2000, the Park Service published the YVP and its Supplemental Environmental Impact Statement ("YVP/SEIS"). On December 29, 2000 the Park Service signed the YVP/SEIS ROD and published notice of it in the Federal Register on January 12, 2001. The YVP/SEIS ROD selected alternative 2 as the preferred alternative for the YVP.
- 31. In September, 2003, the Park Service released the Curry Village and East Yosemite Valley Campground Improvements Project EA and in February, 2004, it signed the Finding of No Significant Impact ("FONSI").
- 32. In September, 2003, the Park Service released the Yosemite Lodge Area Redevelopment Project EA and in February, 2004, it signed the FONSI.
- 33. In July, 2003, the Park Service released the East Yosemite Valley Utilities Improvement Plan EA and in December, 2003, it signed the FONSI.

The YVP

- 34. The YVP/SEIS relies on and seeks to implement the illegal 2000 CMP for the Merced Wild and Scenic River.
- 35. Since the 2000 and 2005 Plans and RODs were deemed illegal, the Defendants have not withdrawn or revised the YVP/SEIS. Yet, the YVP continues to direct development in Yosemite. The Park Service has also not withdrawn any of the FONSIs or decisions to implement YVP projects.
- 36. The Park Service has stated that the YVP has four stated specific purposes: 1) to restore, protect, and enhance the resources of Yosemite Valley; 2) to provide opportunities for high-quality, resource-based visitor experiences; 3) to reduce traffic congestion; and 4) to provide effective park operations, including employee housing, to meet the mission of the National Park Service. The Park Service describes the YVP as a combination of four distinct prior planning projects (Housing Plan, Valley Implementation Plan, Lodge Plan, Yosemite Falls

Project) together in one comprehensive planning effort for Yosemite Valley. The Park Service also describes the YVP as a plan to implement the broad goals of the GMP.

- The YVP/SEIS includes four action alternatives and the no-action alternative. The main focus of each action alternative, including their titles, and the difference among them is the location of parking facilities and transportation patterns in the Park. The action alternatives also vary slightly by location and amounts of employee housing, visitor lodging, campground facilities and other secondary measures. None of these variances, other than the parking and transportation, amounts to a significant range of alternatives.
- 38. The YVP/SEIS did not consider a full range of reasonable alternatives that would address actions that fully comply with WSRA, provide low-cost accommodations for visitors, use capacity limits to reduce overcrowding rather than building additional infrastructure, and reducing the need for employee housing and support services by reducing the concessionaire services provided in Yosemite. There is no alternative that complies with WSRA.
- 39. In many instances, the YVP/SEIS's proposed actions are common across all alternatives, except for "no action." For instance, Segment D of the El Portal Road Project, removal of Cascades Diversion Dam, Visitor Use in Yosemite Valley, the Visitor Experience and Resource Protection study and preferred placement of stables at McCauley Meadows are identical across all action alternatives. Also, development projects in Foresta, Wawona and El Portal are essentially identical for each action alternative. Development projects in Yosemite Valley also are not readily distinguishable in terms of affected land.
- 40. In general, apart from those mentioned above, the preferred alternative includes numerous actions for construction of new infrastructure, conversion of existing infrastructure to other uses, increased services, relocation of certain infrastructure within the Park, establishment of management systems and some actions related to restoration. Overall, the preferred alternative increases the level of development and impacts in Yosemite. The development cost estimate for this alternative for visitor experience/facilities, transportation/circulation, administration/infrastructure and employee housing components is \$413,241,000.

 Comparatively, the resource stewardship component cost estimate totals \$28,449,000,

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representing only six percent of the entire cost of the alternative. Because of the extensive nature of the development projects, examples are provided below but do not constitute an exhaustive list.

41. The preferred alternative is entitled "Yosemite Village and Out-of Valley Parking: El Portal, Badger Pass, and Hazel Green or Foresta." As the title indicates, the heart of this alternative is the development of parking lots for day visitors outside of Yosemite Valley in three of the locations listed (about 1,470 total spaces). A 22-bay bus depot would be constructed in Yosemite Village to shuttle in visitors from the highway corridors and newly developed outlying parking areas, on tour and regional transit diesel buses. However, the out-of-Valley parking areas and shuttle services would not operate from November through March. Increased parking would also be constructed for day-visitor tour buses and day shuttle buses, some in highly valued resource areas. Overnight visitors and some day-use visitors would park at a new Yosemite Village parking lot, which includes the Camp 6 temporary parking lot within the Merced River corridor, illegally established without required environmental analysis during the summer of 1999. In addition to newly developed parking lots, the preferred alternative calls for a transportation scheme that includes widening Segment D as the continuation of the El Portal Road Project (2-58); paving and widening, by up to 26 feet of roadway and shoulders, Southside Drive east of El Capitan Bridge to accommodate new two-way traffic circulation; building a West Valley ten-acre check station with four 500-foot lanes; constructing an entirely new portion of Northside Drive closer to the Merced River; and closing Northside Drive from Yosemite Lodge to El Capitan crossover to daily automobile traffic and allow the paved road to be used as a bike path (2-77). The road will remain, but be converted to a multi-use, pedestrian, bicycle, maintenance and utility vehicle road. Each of these actions will, among other things, degrade the Merced's outstandingly remarkable values ("ORVs") and in some cases affect its free-flowing character. Through these actions and others, including the addition of miles of new asphalt pathways, the YVP proposes to increase the paved asphalt surface of Yosemite Valley and the Merced River corridor.

- 42. The YVP reduces the number of camping opportunities from pre-1997 levels, and increases the number of recreational vehicle hook-up campsites. The YVP/SEIS did not disclose that the Park Service removed approximately 40 percent of the camping from Yosemite Valley in 1997. Thus, the public did not have full information and an opportunity to comment on the difference between past and proposed camping levels. At the same time it reduces camping opportunities, the YVP does not decrease the apparent amount of land used for hard sided lodging units. Indeed hotel priced lodging would expand into currently undeveloped areas. Modestly-priced tent cabins would decrease as even more expensive full-service units increase. Specifically, new lodging would be constructed in undeveloped areas at Yosemite Lodge and at Curry Village. New food and retail services would be developed at Yosemite Village in combination with the visitor transit center. Each of these actions will, among other things, degrade the Merced's ORVs.
- 43. Infrastructure development and Park support functions would primarily be established in the Valley, El Portal, Wawona and Foresta, with a heavy concentration in El Portal. The YVP directs the development of employee housing for Park Service and concessionaire or other Park partner employees, the majority of which is concentrated in the Valley, El Portal and Wawona respectively. For example, at El Portal, high-density housing for employees, a pedestrian bridge and a new levee would be built near an alluvial bench of the Merced River. (v.1b,part 1, 4.2-11) Approximately 90% of the new housing in El Portal would be occupied by primary concessionaire employees. However, an "employee bed", terminology used in the YVP, could equal two to seven people. Housing support facilities for employees would also be constructed in El Portal, including grocery, centers, office space, gas stations, swimming pools, dining areas and other commercial services. The Park proposes housing development on undisturbed land at Wawona, and expands the population of Foresta with employee housing.
- 44. The YVP/SEIS purports to implement the management direction from both the GMP and the 2000 CMP, even though the GMP has never been amended for consistency with a legally valid River Plan and the 2000 CMP was deemed illegal by the Ninth Circuit. The GMP, for the first time in Yosemite history, set a maximum visitor use level (albeit not resource-based)

and anticipated the need to limit visitor use further in the future. Further, WSRA requires, and the Park Service failed to address, user capacity in the 2000 CMP. In the YVP/SEIS, defendants rescind the GMP's 1980 maximum use limits and ignore WSRA's requirement to address capacity. Rather, the YVP includes "expected visitor use in Yosemite Valley," but fails to set maximum limits. (v.1a, 2-20.) It, like the 2000 CMP, also defers any consideration of capacity limits to the results of a five-year monitoring process entitled "Visitor Experience and Resource Protection" ("VERP"). (v.1a, 2-21.) Yet, the YVP commits the Park to expand infrastructure to accommodate an unspecified increasing number of visitors before an adequate user capacity is established.

- 45. The YVP/SEIS increases development within the immediate area of the river.. The YVP includes road development, rip-rap, levees, bridges, and housing within the areas immediate to the Merced River which contain natural processes that must be protected. Within the larger protected river corridor, which is ordinarily ¼ mile, the YVP includes new parking lots, visitor services, lodging facilities, employee housing, housing support facilities and visitor support facilities. Within and outside of the river corridor, the YVP included development of previously undeveloped areas and/or areas presently in a relatively undisturbed state.
- 46. The YVP/SEIS fails to adequately disclose and evaluate the adverse impacts on air quality associated with the regional transportation and shuttle bus systems this project institutes for Yosemite. The degradation of air quality adversely impacts humans, other animals, vegetation and the scenic outstandingly remarkable value of the river. These impacts were not properly addressed or prevented.
- 47. In addition to relying upon a faulty 2000 CMP, the YVP/SEIS's analysis of environmental consequences is inadequate for two fundamental reasons. First, the YVP/SEIS fails to describe the comprehensive project and its individual components in adequate detail so that it can be subjected to analysis. Second, the YVP/SEIS fails to use ORV-related studies and resource assessments to evaluate impacts. In many instances it defers surveys and studies to a later date.

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- 48 For example, the YVP/SEIS does not adequately disclose or evaluate the impacts on hydrology, water quality or on the floodplain of constructing new parking lots and employee housing in El Portal or the widening of Southside drive within the river corridor. The YVP/SEIS does not properly address the impacts on wetlands or soils. The YVP/SEIS does not discuss delineated affected wetlands or soil surveys across the whole project area, though defendants admit these resources will be impacted.
- 49. The YVP/SEIS includes a cursory discussion of impacts to archaeological resources for two entire archaeological districts of unique and irreplaceable national importance. Many of these resources are also ORVs. It predicts adverse impact to or destruction of as many as 38 known prehistoric sites in Yosemite Valley, adverse impact to or destruction of as many as 23 known sites in El Portal, but calls them "minor." Yet the SEIS avoids specific discussion of impacts except to note generally where they will occur. Also, entire areas of new construction, including entrance stations, parts of El Portal, Yosemite Valley campgrounds, Yosemite Village, Foresta, McCauley Meadow, Hazel Green are alternately not mentioned or not properly discussed.
- 50. The YVP/SEIS similarly fails to fully disclose and evaluate the cumulative impacts of past, present and reasonably foreseeable future actions. For example, the YVP/SEIS does not fully disclose or evaluate the impacts suffered during the El Portal Road project, such as the extensive rip-rap along the bank and bed of the Merced River and the Yosemite View Motel construction of 1997. While it discloses "some" impacts due to rip-rap, it fails to evaluate them. (v.1b, part 1, 4.2-8)
- 51. Reasonably foreseeable future actions that were not properly discussed include, among other things: Yosemite Area Regional Transportation Services ("YARTS") system at full build-out and its integration into Yosemite transportation policy; El Portal Development Concept Plan; Yosemite Village Plan; conversion from auto-touring to mass transit and the environmental, social and economic impacts with respect to visitors as well as to the outlying communities; cumulative impacts of YVP actions on overnight accommodation and recreation patterns of low income and non-Anglo park visitors and the Crane Flat redevelopment.

FIRST CAUSE OF ACTION (Violation of the Wild and Scenic Rivers Act)

- 52. Plaintiffs hereby reallege and incorporate the preceding paragraphs.
- 53. WSRA section 12 requires the Park Service to ensure that all plans affecting lands bordering or adjacent to the Merced River protect the Merced River consistent with WSRA. 16 U.S.C. § 1283(a).
- 54. WSRA section 3 requires NPS to "prepare a comprehensive management plan for such river segment to provide for the protection of river values. The plan shall address resource protection, development of lands and facilities, user capacities, and other management practices necessary or desirable to achieve the purposes of this act . . ." 16 U.S.C. § 1274 (d).
- 55. NPS is required, under 16 U.S.C. § 1274 (a)(62)(A), to adopt revisions to the Yosemite National Park General Management Plan that will ensure that there shall be no development or use of the Park lands within the boundaries of Yosemite National Park and the El Portal Administrative Unit that are inconsistent with WSRA and the designation of the Merced River as Wild and Scenic. To date the Park Service has failed to revise its 1980 GMP to provide these assurances and comply with this requirement.
- 56. With respect to the 2000 CMP, the Ninth Circuit stated that "the entire" Merced Wild and Scenic River Comprehensive Management Plan ("CMP") is invalid . . . [and] we did not 'otherwise uphold the [CMP]." *Friends*, 366 F.3d 731. The Ninth Circuit stated that "the National Park Service (NPS) must prepare a new or revised CMP . . ." *Id*.
- 57. With respect to user capacity, the Ninth Circuit held that "the NPS shall adopt specific limits on user capacity_consistent with both the WSRA and the instruction of the Secretarial Guidelines that such limits describe an actual level of use that will not adversely impact the Merced ORVs." *Friends*, 348 F.3d at 797 (emphases added). The court "interpet[ed]

CMP contain specific measurable limits on use." *Id.* (emphasis added).

58. The YVP, and its implementing projects, the Curry Village and East Yosemite

§ 1274(d)(1)'s instruction that a CMP must 'address . . . user capacities' to require only that the

- 58. The YVP, and its implementing projects, the Curry Village and East Yosemite Valley Campground Improvements Project, the Yosemite Lodge Area Redevelopment Project and the East Yosemite Valley Utilities Improvement Plan, rely upon an illegal CMP for protection of the Merced River and its outstandingly remarkable values and, therefore, are illegal.
- 59. The YVP, and its implementing projects, the Curry Village and East Yosemite Valley Campground Improvements Project, the Yosemite Lodge Area Redevelopment Project and the East Yosemite Valley Utilities Improvement Plan fail to protect and enhance the Merced River and adjacent lands, and therefore are illegal.
- Valley Campground Improvements Project, the Yosemite Lodge Area Redevelopment Project and the East Yosemite Valley Utilities Improvement Plan, in implementing the illegal 2000 CMP, and in the absence of a validly revised General Management Plan, violate WSRA's requirement that the Park Service ensure that there will be no development or use of the Park lands within the boundaries of Yosemite National Park and the El Portal Administrative Unit which is inconsistent with WSRA and the designation of the Merced River as Wild and Scenic. This is evidenced by, among other things, the approval of actions in the YVP that will degrade ORVs, will interfere with the free-flow of the Merced River, and that commit resources to the development of infrastructure and commercial services prior to the establishment of valid user capacities.

SECOND CAUSE OF ACTION (Violation of the National Environmental Policy Act)

61. Plaintiffs hereby reallege and incorporate the preceding paragraphs.

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NEPA requires that federal agencies consider all reasonable alternatives to their proposed actions. Agencies must "study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332 (2) (e); 40 CFR § 1507.2. An EIS must inform decisionmakers and the public of reasonable alternatives that would minimize or avoid adverse impacts and those that will enhance the quality of the environment. 40 CFR § 1502.1. 40 CFR § 1502.14 requires an agency to explore all reasonable alternatives, and or alternatives that were eliminated from detailed study, briefly describe the reasons for their being eliminated."

- 63. While preparing an EIS, NPS must not take interim actions which prejudice the ultimate decision by predetermining subsequent development or limiting alternatives in the EIS. 40 CFR § 1506.1. The YVP ROD prejudices decisions to be made in a valid CMP.
- 64. The YVP/SEIS purports to consider five alternatives: a "no action" alternative and four action alternatives. Each of the action alternatives is based upon constructing a new parking and transportation circulation system. Many of the actions in each alternative are identical in scale and scope. NPS failed to consider, and improperly excluded from discussion, reasonable alternatives. None of the alternatives satisfies the purpose and need of the YVP.
- 65. Each action alternative is illegally based on an invalid CMP and allows degradation of ORVs or the free-flowing character of the Merced River. None of the action alternatives fully protects and enhances river values.
- 66. The YVP/SEIS omits, among others, reasonable alternatives such as those that: increase protections and enhancements of the Merced Wild and Scenic River's ORV's: implement resource-based capacity limits for Yosemite rather than adding parking, roadway and transit infrastructure; reducing the overall asphalt surface of Yosemite Valley; require vehicles to fit the size of existing roadways rather than expanding roadways; retain the existing size and

Yosemite; remove equal amounts of hard-sided lodging from Yosemite Valley as camping; restore certain lodging areas to natural conditions; retain and rehabilitate a large proportion of the low-cost overnight units; remove a large proportion of the highest-cost overnight accommodations; retain well-managed private vehicle access system with limit on tour buses; increase in camping with respective decrease in lodging; retain the existing size of entrance stations; reduce the overall levels of commercial activity in Yosemite including full-service hotel accommodations, restaurants, and retail; not add additional development to areas in the Park outside Yosemite Valley.

67. The YVP/SEIS improperly failed to consider reasonable alternatives to achieve its stated goals, all in violation of NEPA and the APA.

THIRD CAUSE OF ACTION (Violation of the National Environmental Policy Act)

- 68. Plaintiffs hereby reallege and incorporate the preceding paragraphs.
- 69. 40 CFR § 1502.16 sets forth the requirements of the "Environmental Consequences" section of an EIS. It requires a complete discussion of, among other issues, direct and indirect effects and their significance, adverse environmental effects that cannot be avoided should the proposal be implemented, the relationship between long term and short term maintenance and enhancement of the environment, and conflicts between other federal, regional, state, local and Indian tribe plans, policies and controls for the area of concern. 40 CFR § 1502.16.
- 70. NPS failed to include a complete discussion of impacts and effects to outstandingly remarkable values and the free-flowing character of the Merced from the YVP and its projects. NPS also failed to fully disclose and evaluate impacts on other natural and cultural resources from the construction of parking areas, new road widening, increased reliance on diesel bus mass transit systems in the Park, new entrance stations, new commercial facilities,

new hotel construction and reconstruction, construction of new tracts of employee housing and other infrastructure, among other actions. NPS failed to fully disclose the socioeconomic effects that changes in lodging type and transportation and parking requirements will have on lower-income individuals and families. The Park Service cannot make a decision in the YVP/SEIS to implement a project of this magnitude, but defer a meaningful discussion of its impacts to a later date. The impacts analysis must inform the decision and thus must *precede* it rather than justify it *post hoc*.

- 71. The discussion of impacts that the YVP deferred to a later date is not adequately addressed in the environmental assessments for the Curry Village and East Yosemite Valley Campground Improvements Project, the Yosemite Lodge Area Redevelopment Project and the East Yosemite Valley Utilities Improvement Plan. These EAs do not properly disclose the environmental consequences of these YVP implementation projects.
- 72. NEPA requires evaluation of cumulative impacts. 40 CFR § 1508.25(a)(2). Analysis of cumulative impacts of past, present and reasonably foreseeable actions from the YVP/SEIS are missing. For example, the Park Service fails to adequately analyze the cumulative effects of past, currently proposed, and future changes in lodging on scenic resources, natural resources, cultural resources, and on socioeconomic factors of visitors. Also, the adverse impacts of the El Portal Road Project are not quantified and factored into the cumulative impacts analysis. The cumulative adverse effects of future actions are also vague and unquantified.
- 73. The discussion of cumulative impacts that is missing in the YVP is not adequately addressed in the environmental assessments for the Curry Village and East Yosemite Valley Campground Improvements Project, the Yosemite Lodge Area Redevelopment Project and the East Yosemite Valley Utilities Improvement Plan. These EAs do not properly disclose the cumulative impacts of these YVP implementation projects.

- 74. NEPA requires an EIS to present the full scope of a project, to include all actions and connected actions which may proceed under the project. 40 CFR § 1508.25(a). The Park Service failed to adequately describe the entire scope of the YVP in sufficient detail, thereby making it impossible for the public or the decision makers to fully understand the environmental impacts of the project. Additionally, the maps used to visually illustrate areas of impact are often inaccurate and not consistently correlated to natural resources, the river corridor or ORVs. The total acres of "restoration" versus "development" are also misleading and generally nonspecific as to impacts on the actual resource. For instance, in the Yosemite Lodge map, the "restoration" area is exaggerated.
- 75. Finally, the YVP/SEIS discusses undefined future mitigation measures for undefined future impacts as a means of circumventing a true evaluation of impacts. The discussion of mitigation of impacts is inadequate.

FOURTH CAUSE OF ACTION (Violation of the National Environmental Policy Act)

- 76. Plaintiffs hereby reallege and incorporate the preceding paragraphs.
- 77. An agency may rely upon, or tier to, a previous and broader environmental impact statement under certain and specific circumstances, as outlined in 40 CFR § 1508.28.

 Necessarily, tiering requires that the underlying document be valid and have provided the analysis of issues for which tiering is invoked.
- 78. The NPS tiered the YVP/SEIS to the 1980 GMP and the 2000 CMP/EIS. The Curry Village and East Yosemite Valley Campground Improvements Project EA, the Yosemite Lodge Area Redevelopment Project EA and the East Yosemite Valley Utilities Improvement Plan EA tier to the YVP/SEIS.
- 79. The GMP is over twenty years old, and any impacts analysis contained therein is outdated because of significant new information about the Merced River and adjacent lands. It also has not been amended to comply with WSRA and a legally valid CMP. The 2000 CMP is

illegal and has been set aside. As such, there exists no operative document to which the YVP/SEIS can properly tier.

FIFTH CAUSE OF ACTION (Violation of the Administrative Procedure Act)

- 80. Plaintiffs hereby reallege and incorporate the preceding paragraphs.
- 81. The Administrative Procedure Act, 5 U.S.C. § 701, *et seq.*, entitles a party to seek judicial review of an agency action where a legal wrong is alleged and the party alleging the violation is adversely affected or aggrieved by the agency action. Pursuant to 5 U.S.C. § 706(2)(A), a reviewing court shall hold unlawful and set aside an agency action found to be arbitrary, capricious, or otherwise not in accordance with the law. The Park Service acted illegally for all the reasons set forth above.
- 82. The Park Service acted illegally and in violation of the APA by approving and adopting the YVP/SEIS and YVP ROD that does not fully comply with WSRA.
- 83. The Park Service acted illegally and in violation of the APA by approving and adopting the Curry Village and East Yosemite Valley Campground Improvements Project, the Yosemite Lodge Area Redevelopment Project and the East Yosemite Valley Utilities Improvement Plan that do not fully comply with WSRA.
- 84. NPS acted illegally and violated the APA by failing to consider all reasonable alternatives in the YVP/SEIS.
- 85. NPS acted illegally and violated the APA by failing to adequately disclose the full range of environmental consequences of the YVP/SEIS, the Curry Village and East Yosemite Valley Campground Improvements Project, the Yosemite Lodge Area Redevelopment Project and the East Yosemite Valley Utilities Improvement Plan.

WHEREFORE, Plaintiffs request that this Court issue:

- 1. A declaratory judgment that the Park Service violated WSRA and the APA in adopting the YVP/SEIS and YVP ROD;
- 2. A declaratory judgment that defendants violated WSRA and the APA in adopting the Curry Village and East Yosemite Valley Campground Improvements Project, the Yosemite Lodge Area Redevelopment Project and the East Yosemite Valley Utilities Improvement Plan;
- 3. A declaratory judgment that the YVP/SEIS fails to comply with procedures and requirements of the National Environmental Policy Act, 42 U.S.C. §§ 4321-4370(d) and CEQ regulations, 40 C.F.R. §§ 1500-1517.7;
- 4. A declaratory judgment that the Curry Village and East Yosemite Valley
 Campground Improvements Project, the Yosemite Lodge Area Redevelopment Project and the
 East Yosemite Valley Utilities Improvement Plan environmental assessments fail to comply with
 procedures and requirements of the National Environmental Policy Act, 42 U.S.C. §§ 43214370(d) and CEQ regulations, 40 C.F.R. §§ 1500-1517.7;
- 5. A declaratory judgment that the actions of Defendants as set forth in this complaint are arbitrary and capricious, an abuse of discretion, not in accordance with the law, and without observance of procedures required by law, pursuant to the APA, 5 U.S.C. § 706;
 - 6. An injunction on implementation of the YVP;
- 7. For costs of suit herein, including attorney fees, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 or other authority; and
 - 8. For such other and further relief as the court deems proper and just.

Dated: December 28, 2006. Respectfully submitted,

/s/ Julia A. Olson
Julia A. Olson
Sharon E. Duggan
Attorneys for Plaintiffs